

Judicial processes and punishment in Classical India



From Thomas Watters, T.W. Rhys Davis, & Vicenta A. Smith (Eds.). *On Yuan Chwang's Travels in India*, AD 629-645.¹ [2 Vols.] London: Royal Asiatic Society, 1904-1905. Vol. I, (SOCIAL AND LEGAL MATTERS), pp. 171-72.²

The character of the Indian people.

They are of hasty and irresolute temperaments, but of pure moral principles. They will not take anything wrongfully, and they yield more than fairness requires. They fear the retribution for sins in other lives, and make light of what conduct produces in this life. They do not practise deceit and they keep their sworn obligations.

The judicial processes and modes of punishment.

As the government is honestly administered and the people live together on good terms the criminal class is small. The statute law is sometimes violated and plots made against the sovereign; when the crime is brought to light the offender is imprisoned for life; he does not suffer any corporal punishment, but alive and dead he is not treated as member of the community (lit. as a man). For offences against social morality, and disloyal and unfilial conduct, the punishment is to cut off the nose, or an ear, or a hand, or a foot, or to banish the offender to another country or into the wilderness. Other offences can be atoned for by a money payment.

The four ordeals by which the innocence or guilt of an accused person was determined.

These are by water, by fire, by weighing, and by poison:

- 1 In the water ordeal the accused is put in one sack and a stone in another, then the two sacks are connected and thrown into a deep stream; if the sack containing the stone floats, and the other sinks, the man's guilt is proven.

¹ [The Byzantine-Arab Wars began in 626 AD. Much of the Roman Empire is conquered by Muslim Arabs led by Khalid ibn al-Walid.]

² The name of the celebrated Chinese pilgrim and translator is spelt in English in the following ways (among others):

1. M. Stanislas Julien	Hiouen Thsang
2. Mr. Mayers	Huan Chwang
3. Mr. Wylie	Yuén Chwäng
4. Mr. Beal	Hiuen Tsiang
5. Prof. Legge	Hsüan Chwang
6. Prof. Bunyiu Nanjio	Hhüen Kwän

- 2 The fire ordeal requires the accused to kneel and tread on hot iron, to take it in his hand and lick it; if he is innocent he is not hurt, but he is burnt if he is guilty.
- 3 In the weighing ordeal the accused is weighed against a stone; and if the latter is the lighter the charge is false, if otherwise it is true.
- 4 The poison ordeal requires that the right hind leg of a ram be cut off, and according to the portion assigned to the accused to eat, poisons are put into the leg, and if the man is innocent he survives, and if not the poison takes effect.

Note by the Editor

Julien³ takes a very different meaning out of the text for the last sentence. He understood the author to state that the poison ordeal consisted in placing in the incised thigh of a ram “une portion des aliments que mange le prévenu,”⁴ poisons having been previously spread over the “portion,” and if the ram then died the accused was guilty, and if the poison did not work he was innocent. But this cannot be regarded as the meaning of the text (which is not, however, very clearly expressed). Our author’s account of these trials by ordeal in India differs both as to the actual ordeals, and the mode of procedure with them, from the descriptions to be found in other works. Manu, for example, does not give either the weighing or the poison ordeal, but these are mentioned by other authorities.⁵

³ [Stanislas Aignan Julien, 1797–1873, one of the most academically respected sinologists in French history, who served as the Chairman of Chinese at the Collège de France for over forty years. See *Histoire de la Vie de Hiouen-Tsang*, Paris 1856.]

⁴ [A portion of the food eaten by the accused.]

⁵ Manu VIII, 114; Al-Birunī, Vol. II, p. 159.